

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1799 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE AKSHAY H.MEHTA

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

KB SHAH

Versus

CHIEF MANAGER

Appearance:

1. Special Civil Application No. 1799 of 2002
MR DEVESH A BHATT for Petitioner No. 1
MR DARSHAN M PARIKH for Respondents
-

CORAM : MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 21/03/2003

ORAL JUDGEMENT

1. Heard the learned advocates for the parties and
considering the facts and circumstances of the case,

Rule. Mr. Darshan M. Parikh, learned advocate appearing for the respondent-Bank waives service of rule.

2. By consent of the parties, the matter is taken up for final hearing today.

3. In this petition the petitioner has prayed for the following reliefs :-

"11(A). This Hon'ble Court may be pleased to issue a writ of certiorari or any other writ or direction, quashing and setting aside orders No. BRD/PO/PAD/2409/2000 and ZO/PAD/868/2000 dated 27/12/1999 and 08/06/2000 of respondent Nos. 2 and 3 respectively and

(B) This Hon'ble Court may be pleased to issue a writ of mandamus or any other appropriate writ or direction to the respondent No. 4 to release all the terminal benefits to the petitioner, which have been illegally detained by them with interest at the rate of 24% from the date they are due till they are paid."

Apparently, though the petitioner has not so worded these reliefs accordingly, the fact remains that the same are alternative reliefs. If the relief (A) is granted, there is no question of granting relief (B).

4. The brief facts leading to the filing of the petition are as under :-

4.1. The petitioner was working as ALPM Operator of respondents' Station Road Branch, Surat. The petitioner has informed and disclosed the financial dealings, transactions and affairs of M/s. Sai Corporation, a constituent of bank to outsiders, such as press, income-tax authorities and various other persons. Because of the aforesaid alleged unauthorised acts of the petitioner, M/s. Sai Corporation have issued a legal notice dated 8/12/1994 to various authorities of the bank charging the petitioner and the bank of having committed a breach of obligation as to fidelity and secrecy causing financial loss of Rs.25 lacs and over and mental agony to them and lowering down their image in the eyes of public and their clients. They have sought recoupment from the bank of such losses and warned of initiating legal actions against the bank. This act of the petitioner was violation of declaration of fidelity and secrecy executed by the petitioner while entering in the services of the bank. The petitioner made various wild allegations

against the officials of the bank and its constituents and unauthorisedly disclosed information regarding the affairs of the bank and its constituents which amounted to gross misconduct. The allegations of misconduct as well as various other charges regarding transactions and engaging in any trade or business outside the scope of its duty without permission of the bank and doing acts which were prejudicial to the interest of the bank or gross negligence or negligence involving or likely to involve the bank in serious loss have been made.

4.2. As a result of the aforesaid acts of the petitioner, charge-sheet dated 21/9/1998 has been served to the petitioner. The petitioner has submitted his reply to the charge-sheet and thereafter departmental inquiry was held against the petitioner. The findings of the Inquiry Officer are produced at pages 31 to 57 of the petition alongwith Annexure-C, which is a notice issued by the bank calling upon the petitioner to show cause why punishment as proposed in the said notice should not be imposed. The Inquiry Officer has come to the conclusion that Charge No. 1 has been proved, charge No. 2 has been partly proved and charge No. 3 has not been proved. The Inquiry Officer has held that all the allegations with respect to Charge No. 1 have been proved. With respect to the second Charge, allegation (ii) has been proved and allegation (vi) has been partly proved.

4.3. The Disciplinary Authority, after going through the report of the Inquiry Officer dated 8th September, 1999, has agreed with the conclusion arrived at by the Inquiry officer and concurred with the findings of the Inquiry Officer and proposed a penalty of dismissal from the service of the bank without notice for Charge No. 1 and stoppage of one annual increment with cumulative effect for Charge No. 2, which was held to be partly proved.

4.4. After considering the record of the case and the representations made by the petitioner, the Disciplinary Authority imposed a penalty of dismissal from service without notice for Charge No. 1 and stoppage of one annual increment with cumulative effect for Charge No. 2 vide order dated 27/12/1999.

4.5. Against the said order dated 27/12/1999 of the Disciplinary Authority, the petitioner preferred a Departmental Appeal before the Appellate Authority. After going through the records, inquiry proceedings and considering the submissions made by the petitioner, the Appellate Authority has come to the conclusion vide its

order dated 8/6/2000 that the penalty imposed was not disproportionate or harsh or unreasonable. However, the Appellate Authority went a little further and looked through the entire service record of the petitioner to find out, if any, lenient view can be taken to help the petitioner or to reduce the punishment. However, considering the age of the petitioner and taking a humanitarian view and for mitigating the likely financial hardships that the petitioner and his family members were likely to suffer, the Appellate Authority decided to reduce the penalty from dismissal from service without notice to "removal" from service with superannuation benefits as would be due otherwise at that stage and without disqualification from future employment with respect to Charge No. 1 and maintained the penalty with respect to Charge No. 2.

5. The petitioner has approached this Court challenging the aforesaid orders of penalty passed by the respondents nos. 2 and 3 by way of this petition.

6. Mr. Bhatt, learned advocate appearing for the petitioner has taken me through the record of the case and has contended that the penalty imposed upon the petitioner is not commensurate with the gravity of charges levelled against him and is too harsh and disproportionate compared to the misconduct alleged against him. He has also submitted that no financial irregularity or defalcation charges are levelled against the petitioner. Charges, if any, proved are not such as would warrant an economic death of an employee who has put in such a long services. He has also submitted that the inquiry proceedings and the orders passed are in violation of the principles of natural justice and that because of a bias of certain persons against the petitioner, the impugned orders are passed. He has submitted that even if it is held that the petitioner is not entitled to relief 11(A), the petitioner is entitled to successfully challenge the decision of the bank management in not granting him the superannuation benefits which are admissible to him in view of the fact that the Appellate Authority has imposed a penalty of removal from service with superannuation benefits as would be due otherwise at that stage. He has made grievance that though the petitioner is removed from service, his removal is subject to his getting superannuation benefits, however he has not been given the same.

6.1. As against that, Mr. Parikh, learned advocate appearing for the respondent bank has contended

that the departmental proceedings have culminated into the proof of Charge No. 1 and part proof of Charge No. 2 levelled against the petitioner. He has submitted that the Disciplinary Authority as well as the Appellate Authority after considering the entire record, have come to a conclusion that the Inquiry Officer has rightly held the charges as proved as aforesaid and that they agreed with the conclusions arrived at by the Inquiry Officer. He has submitted that disclosure of information of a constituent of a bank which can have very serious repercussion not only on the reputation of a customer of a bank but also on such a customer facing multiple proceedings which may be civil, criminal or otherwise. It can also lead the bank into various liabilities and has in fact put a constituent of the bank and bank into difficulties. He has submitted that such disclosure of transactions of a constituent had put the customer and the bank into very serious consequences. He has submitted that the Income-tax Department raided the office of the constituent of the bank pursuant to information about financial dealings of the party with the bank was published in the newspapers which were passed on to the press by the petitioner. Though the petitioner had signed a fidelity and secrecy undertaking at the time of entering into the employment, he had committed breach of the same. He has submitted that considering overall situation, the petitioner cannot be considered as a person desirable to be continued in the employment and, therefore, he has been removed from service, which penalty cannot be said to be harsh or improper and it is not required to be interfered with by this Court under Article 226 of the Constitution of India.

6.2. Mr. Parikh has also submitted that the petitioner has failed to show as to how the principles of natural justice are violated and as to how someone had bias against the petitioner. He has also submitted that the Hon'ble Court has no jurisdiction to sit in appeal over the decision of the Disciplinary and Appellate Authorities and this petition is not required to be entertained.

6.3. With respect to the submissions regarding grant of superannuation benefits, Mr. Parikh has taken me through Regulation 22 of the UCO Bank (Employees') Pension Regulations, 1995, which reads as under :-

"Forfeiture of service. - (1) Registration or dismissal or removal or termination of an employee from the service of the bank shall

entail forfeiture of his entire past service and

(2) An interruption in the service of a Bank employee entails forfeiture of his past service, except in the following cases, namely :-

(a) authorised leave of absence;

(b) suspension, where it is immediately followed by reinstatement, whether in the same or different post, or where the bank employee dies or is permitted to retire or is retired on attaining the age of compulsory retirement while under suspension;

(c) transfer to non-qualifying service in an establishment under the control of the Government or Bank if such transfer has been ordered by a competent authority in the public interest;

(d) joining time while on transfer from one post to another.

(3) Notwithstanding anything contained in sub-regulation (2), the appointing authority, may, by order, commute retrospectively the periods of absence without leave as extraordinary leave.

(4)(a) In the absence of a specific indication to the contrary in the service record, an interruption between two spells of service rendered by a bank employee shall be treated as automatically condoned and the pre-interruption service treated as qualifying service;

(b) Nothing in clause (a) shall apply to interruption caused by resignation, dismissal or removal from service or for participation in a strike;

Provided that before making an entry in the service record of the bank employee regarding forfeiture of past service because of his participation in strike, an opportunity of representation may be given to such bank employees."

He has submitted that the petitioner had opted for the Pension Scheme in place of Provident Fund and therefore, in case of the petitioner, this Regulation will be

applicable. He has drawn my attention to the order passed by the Appellate Authority wherein the Appellate Authority has substituted the penalty of "removal" for a penalty of dismissal. He has submitted that as a removal of an employee from service as per Regulation 22 of the Pension Regulations, entails forfeiture of his entire past service, which disentitles him to any pensionary benefits and, therefore, the petitioner is not entitled to get the same.

7. Considering the aforesaid submissions made by the parties and perusing the record of the case, following two questions arise for determination :-

- I. Whether the orders of penalty passed by the bank are required to be quashed and set aside or not ?
and
- II. Whether the petitioner is entitled to claim and get superannuation benefits ?

8. So far the first question of imposition of penalty is concerned, very serious charge of disclosing information in breach of explicit undertaking given by the petitioner at the time of entering into the service is levelled against the petitioner. The said charge is proved. It is also proved that because of disclosing certain confidential information by the petitioner, the constituent of the bank has suffered and raid was carried out by the Income Tax Department at their premises and the constituent claims to have suffered loss of reputation and has issued legal notice to the bank for recovery of a large sum of money. Admittedly, the petitioner was duty bound not to disclose any such information as was done by him. It is the contention of the bank that a very serious situation has arisen because of such a misconduct committed by the petitioner. It is also proved that the petitioner himself and his family, in their personal capacity, had some transactions with the said constituent and it is apparent that the petitioner appears to have disclosed confidential information about the said constituent because of some differences of opinion with that constituent. Be as it may, the said action of the petitioner has put the bank and the management of the bank into very serious consequences. The petitioner had also made wild allegations against various officers of the bank which also would have serious repercussions on the bank and such officers. Considering the gravity of charge, in my opinion, the penalties imposed upon the petitioner do not appear to be disproportionate or harsh and no interference by this Court is called for and the

relief 11 (A) claimed by the petitioner cannot be granted and the said prayer is required to be refused and is hereby refused.

9. However, so far as the second question is concerned, there is great force in the submissions of Mr. Bhatt. The penalty imposed upon the petitioner is as under :-

"Mr. K.B. Shah (PFM No. 10724) is removed from services with superannuation benefits as would be due otherwise at that stage and without disqualification from future employment."
(emphasis supplied)

the penalty imposed upon the petitioner per-se shows that though the penalty is of removal from service, the removal is subject to a condition that he shall be paid superannuation benefits which will accrue to him on the date of his removal from service, as if he had superannuated on that particular date. Apart from this, the Appellate Authority has considered the fact that the petitioner had only 6 years left before he would superannuate and looking to his age and keeping a humanitarian approach and for mitigating the likely financial hardships that the petitioner and his family were likely to face, he had decided to substitute the penalty and had decided to permit the petitioner to get the superannuation benefits. Thus, in my opinion, it is clear that the penalty pre-supposed that the petitioner would be entitled to superannuation benefits. Merely because the Pension Regulations provide that on removal from service the entire past service shall be forfeited disentitling an employee to pension, in the present case, the petitioner cannot be said to be not entitled to the superannuation benefits. The said clause shall not be applicable in this case because the order itself provides that superannuation benefits shall be granted as if the petitioner had superannuated on the date of removal and, therefore, the petitioner is right in contending that he was entitled to get the superannuation benefits. Denial of such benefits would defeat the very purpose with which said order has been passed by the Appellate Authority.

10. In the result, the petitioner is not entitled to relief as prayed for in para. 11 (A) and the said relief is rejected. However, the respondent bank is directed to compute the superannuation benefits admissible to the petitioner as on the date of the removal as if the petitioner had retired on that date and

forthwith pay the same to the petitioner within a period of 8 weeks from the date of receipt of writ of this order. The petitioner is not entitled to any other relief and the petition stands disposed off in the aforesaid terms. Rule is made absolute only to the aforesaid terms with no order as to costs.

[AKSHAY H. MEHTA, J.]

* Pansala.